

REMARKS

The applicants request continued examination of the application on the basis of the present amendment. The amendment makes the changes in claims 1 and 6 which were proposed in applicants' non-entered amendment of May 4, 2006.

The present amendment also adds new claims 26 and 27. Claim 26 is modeled after claim 1 but omits reference to treating the symptoms of the common cold, i.e. new claim 26 simply calls for treating the common cold in a mammal. While the applicants do not agree with the Examiner's rejection of the claims on the Cook et al. patent, it is noted that in the Advisory Action of June 1, 2006 (continuation of ¶ 11), the Examiner has referred to Cook as showing the "treatment of symptoms" associated with viral infections. Accordingly, claim 26 omits the reference to the treatment of symptoms and is thus even further removed from the Examiner's reference.

New claim 27 is modeled after claim 8 but depends from new claim 26 and is limited to the use of preferred conjugated linolenic acid or derivative thereof.

The applicants respectfully submit that their claims are not anticipated by Cook et al. for reasons noted in the non-entered amendment of May 4, 2006.

Manifestly, a Section 102(b) rejection requires that the reference relied upon disclose, expressly or inherently, each and every feature called for by the rejected claims. Cook et al. clearly do not meet this test. There is, in brief, no disclosure in Cook et al. of the treatment of a common cold or the symptoms thereof in a mammal. The reference to viral infections and picornavirus do not constitute disclosure of the treatment of the common cold. The treatment of the common cold is not expressed by or inherent in Cook et al. The applicants' method requires treatment of a cold or symptoms of a cold in a mammal which necessarily means that the mammal is not just any mammal but a specific one, i.e. one that has a cold or the symptoms thereof and is in need of treatment for it. This is clearly not shown or inherent in Cook et al.

The Examiner states that "the treatment of symptoms associated with the common cold as currently claimed are inherently treated by the method of Cook et al." (action, page 3, lines 4-6). Applicants respectfully disagree. Cook et al. cannot inherently treat the symptoms associated with the common cold because they do not disclose treating any subject with the common cold or the symptoms thereof.

The authorities relied on by the Examiner are not relevant to the present situation. The applicants are not claiming a composition based on the discovery of a

new property, i.e. the applicants are not claiming CLA to be new per se. What they are claiming is a new use of CLA, a use which is not disclosed by Cook et al. or inherent therein. Cook et al. say nothing about treating the common cold with CLA. Hence, Cook et al. do not disclose the applicants' method. It is as simple as that and the Examiner's Section 102(b) fails for this reason. The Examiner cannot read into Cook et al. the treatment of the common cold when there is no reference therein to such treatment. Simply stated, the practice of the Cook et al. method does not necessarily or inherently meet the applicants' method. Accordingly, the applicants' claims are not anticipated. This is true for all of the claims but even more so for the applicants' more specific dependent claims such as, for example, claim 6, which claims the method for treating a human with a cold caused by the rhinovirus and claims 24 and 25 which specify certain cold symptoms.

In this regard, it is noted that the treatment of the symptoms associated with TNF production in animals disclosed by Cook et al. is not the same as a disclosure of, the treatment of the common cold as called for by the applicants. The same is also true with respect to the other viral infections referred to by Cook et al. None of these is the same as the virus which causes the common cold and significantly Cook et al. say nothing about the treatment of rhinovirus, the virus that causes the common cold.

In essence, the Examiner's rejection is based on the inherent properties of CLA. The applicants' claims, however, as noted above, relate to a method of treating a mammal having a common cold and/or the symptoms thereof. There is no disclosure in Cook et al. of any such method.

Treating a mammal that does not have a common cold with CLA is not a method of treating the common cold. Clearly, if the animal does not have a common cold, the administration of CLA to such animal does not amount to the treatment of a cold, or the symptoms thereof.

Although Cook et al. describe treating adverse effects of viral infections, there is no indication that the adverse effects could be those associated with a common cold. While the symptoms in Cook et al. may not be limited to weight loss, there is still no indication of what any other specific symptoms might be. As such, there is no disclosure of the treatment of the symptoms of the common cold as broadly defined in applicants' claim 1 or, more specifically, in, for example, claims 24 and 25. New claims 26 and 27 are even further removed from the Cook et al. disclosure.

Furthermore, to be anticipatory, a reference must be enabling. There is clearly no enabling disclosure in Cook et al. of a method for the treatment of any and all symptoms of any and all viral infections. The broad disclosure in Cook et al. is clearly speculative and unrealistic. There is no experimental evidence in Cook et al. to unequivocally show that CLA is a universal anti-viral agent. The only example relating to infection with a virus is Example 7 and this only shows that CLA can have an effect on weight loss in chicks (which are not mammals).

To reiterate, Cook et al. cannot be considered to provide a disclosure of a method of treatment for a common cold or the symptoms of the common cold such as sneezing, runny nose/rhinitis, nasal obstruction (blocked nose or stuffiness), sore or itchy throat, coughing, hoarseness, asthma exacerbation and mild general symptoms, such as headache, fever and chilliness. None of these symptoms are disclosed in Cook et al. There is no indication of any specific symptoms other than weight loss in Cook et al.

An animal "exposed to" or "infected" with a picornavirus, adenovirus or coronavirus is not a disclosure of a mammal having a common cold. Firstly, the host may be resistant to the virus and develop no symptoms. Secondly, there is no indication in Cook et al. which genus of the virus the animal might be infected with. As the applicants have stated previously, not all members of these viral families can cause the common cold.

In connection with the foregoing, it is noted that "picornavirus" refers to a family of many different viruses and cannot be equated to a reference to the rhinovirus that can cause the common cold. Cook et al. do not mention rhinoviruses. Since Cook et al. fail to make any link between any viruses and the symptoms of a common cold in a mammal, there can be no disclosure of a common cold in a mammal being treated by CLA.

In short, the mere disclosure by Cook et al. of a family of many different viruses is not a disclosure of a mammal having a particular set of symptoms in need of treatment, i.e. a common cold or the symptoms thereof. Cook et al. do not specifically disclose any symptoms other than weight loss in any case.

In view of the foregoing, the applicants submit that the claims define subject matter which is novel and, for that matter, non-obvious over the disclosure in Cook et al. There is no suggestion in Cook et al. to use CLA to treat a human or other mammal that has a common cold. Accordingly, it is respectfully submitted that the Section 102(b) rejection based on Cook et al. should be withdrawn.


The foregoing comments apply to all of the applicants' claims, including newly added claims 26 and 27. The last-mentioned claims are even further removed from the reference because of their limitation to treating the common cold, not just the symptoms thereof.

The Examiner is particularly encouraged to note that the features of the applicants' dependent claims are not in any sense disclosed by Cook et al. in the context of the method of claim 1. Thus, for example, Cook et al. are totally silent as to such features as are called for in, for example, claims 9, 24 and 25. In the absence of any disclosure by Cook et al. of the features of these claims, the claims cannot be considered to be anticipated by the reference.

For all of the above reasons, the applicants submit that the Examiner's Section 102(b) rejection based on Cook et al. should be withdrawn and the claims allowed.

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Date: July 26, 2006

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